Supreme Court of Indiana.

PERCELL v. ENGLISH.

The rule that a landlord not under contract to repair is not responsible to the tenant for injuries caused by a neglect to repair, applies to a case where the landlord hires out apartments to separate tenants, and the stairway, the neglect to repair, which caused the injury, was the common passage-way for the use of all the tenants.

A., the owner of a building, leased to B. rooms in the upper story. The approach to these rooms was by a stairway common to the use of all the tenants. The railing of this stairway had been suffered to get out of repair. The stairway became dangerous from ice and snow, and B., in attempting to descend slipped, and in falling caught the railing which gave way, precipitating B. to the ground. *Held*, that A. was not liable in damages.

A promise to repair made by the landlord after the lease is entered into, is a mere *nudum pactum*, and does not render the landlord liable for injuries caused by a failure to repair.

FROM the Marion Circuit Court.

This was an action by a tenant against her landlord to recover damages for injuries caused by the defective condition of the premises. The facts are sufficiently stated in the opinion which was delivered by

ELLIOTT, J.—The case made by the appellant's complaint, shortly stated, is this: She was the tenant of the appellee, having leased rooms in an upper story of a building owned by him; the approach to these rooms was by a stairway common to the use of all the tenants of the building; the railing of this stairway had been suffered to get out of repair and was rotten and loose; the stairway became dangerous and unsafe from ice and snow which covered the steps; the appellant, in attempting to descend, slipped, and in falling caught the railing which gave way, and she fell to the pavement and was seriously hurt. It will be observed that the complaint does not allege that the landlord had contracted to repair, but proceeds entirely on the theory that the duty rested upon him independently of contract.

The court, upon the close of the appellant's evidence, directed the jury to return a verdict for the defendant.

The court may, there is no doubt, direct the jury to return a verdict in favor of the defendant in a proper case: *Washer* v. *The Allenville, &c., Co.*, 81 Ind. 78; *Weis* v. *The City of Madison*, 75 Id. 241; *Haggard* v. *Citizens' Bank*, 72 Id. 130; *Dodge* v. *Gaylord*, 53 Id. 365; *Pleasants* v. *Fant*, 22 Wall. 116.

When the cause of action declared on is negligence the court may direct a verdict for the defendant, in cases where the evidence wholly fails to make out a *prima facie* case. It is true that the question of negligence is generally one of mingled law and fact, but there are cases where the question is purely one of law: *Binford* v. *Johnson*, 82 Ind. Where there is no dispute as to the facts, and no controversy as to the inferences that can be legitimately drawn from them, the question is one of law, and the court may rightfully take the case from the jury: 2 Thomp. on Neg. 1236, 1237; Thomp. Charging the Jury 23; *Toomey* v. *London, &c.*, 3 C. B. (N. S.) 146.

The right of the court to withdraw the case from the jury unquestionably exists in cases where negligence is the issue as well as in other cases; but whatever may be the character of the issue, the case cannot be taken from the jury if there are any facts proved from which the jury would by fair and reasonable inference be authorized to find for plaintiff. All reasonable inferences, not, however, forced and violent ones, are to be indulged in favor of the plaintiff on such a case, for the rule is substantially the same as that which obtains in cases where there is a demurrer to the evidence: *Hazzard* v. *Citizens' Bank*, 72 Ind. 130; *Steinmetz* v. *Wingate*, 42 Id. 574; *Wilcuts* v. *North Western, &c., Co.*, 81 Id. 30; *Fritz* v. *Clark*, 80 Id. 591. If the evidence given upon the trial of this cause can by fair intendment, or reasonable inference be deemed to make out the cause of action declared on, then the appellant is entitled to a reversal. It is not sufficient even upon a demurrer to the evidence, that the plaintiff make out some cause of action; but it is incumbent upon him to make out the cause of action set forth in his complaint. He cannot declare on one cause of action and recover upon another. There is in this complaint no allegation that the appellee had agreed to keep the demised premises in repair, and even if a contract had been proved, it is doubtful whether the appellant could have been allowed to succeed on the theory that there was a contract. But waiving this point, and going to the evidence, we are clear that no contract was proved. The utmost that can be claimed is that the evidence tends to show a voluntary promise, made after the contract for the letting of the premises had been entered into. This evidence did not establish, nor tend to establish, a contract on the part of the landlord to repair; for it did no more than show a mere gratuitous

promise creating no binding obligation. The rule upon this subject is thus stated in a recent work: "A promise to repair, made after the lease is entered into, is a mere *nudum pactum*, and no liability exists on his (the landlord's) part for a failure to make such repairs:" Wood's Land. and Tenant, sect. 382; *Libbey* v. *Tolford*, 48 Me. 316; *Gill* v. *Middleton*, 105 Mass. 477; s. c. 7 Am. Rep. 548; *Doupe* v. *Genin*, 37 How. Pr. 5; s. c. 45 N. Y. 119.

The case is therefore to be treated as one in which there is no contract, on the part of the landlord to repair.

Where there is no duty, there can be no actionable negligence: Cooley on Torts 659; Add. on Torts, sect. 28; Whart. on Neg., sect. 3. In cases of the class to which the present belongs, three of the essential things which the plaintiff is required to establish, are the existence of a duty, that it is owing to him, and that it has not been performed. The material part of the appellant's case could not be made out without showing a duty owing to her from her landlord to keep the demised premises in repair. The duty of the landlord to repair does not arise out of the relation of landlord and tenant; on the contrary, the relation devolves that duty upon the tenant. It is only where the landlord contracts to maintain the premises in repair that he is burdened with that duty. The logical conclusion from this principle, and a more firmly settled one there is not in all the books, is that a landlord not under contract to repair, is not, as a general rule, responsible to the tenant for injuries caused by a defective condition of the demised premises. In a carefully written article in the American Law Review, the authorities are reviewed, and the rule deduced that there is no warranty, express or implied, as to the condition of the demised premises, and that the tenant must determine for himself the safety and fitness of the premises for use and occupancy: 6 Am. Law Rev. 614; Taylor on Land. and Tenant, 6th ed., 381. This is the rule adopted by our own cases: *Estep* v. *Estep*, 23 Ind. 114, vide authorities cited, page 116. Ordinarily, therefore, a tenant who leases property takes upon himself all risks, except, perhaps, as against latent defects not discoverable by the use of ordinary diligence, and cannot recover damages from his landlord because of an omission to make the premises habitable or safe. Whether a tenant would have a right to abandon the premises if the means of access to them had become unsafe and dangerous

is not here the question. The question here is, whether the tenant continuing in possession and making use of the premises, can recover damages for personal injuries caused by the unsafe condition of the means of ingress and egress? There are cases, we may remark in passing, holding that even where the landlord covenants to make repairs and fails to do so, the tenant must, where the expense is not great, make them and charge them against the landlord: *Cook* v. *Soule*, 56 N. Y. 420; *Loker* v. *Damon*, 17 Pick. 284; *Miller* v. *Mariner's Church*, 7 Me. 51; *Benkard* v. *Babcock*, 2 Rob. 175. The duty of the tenant to keep in safe condition for his own use the demised premises extends to all the appurtenances connected therewith, and this includes steps, stairways and other approaches. Whatever passes to the tenant under the lease, is for the term designated, under his control and in his possession: *Pomfret* v. *Ricroft*, 1 Saund., 5th ed., 321; Wood on Land. and Tenant, sect. 213; Auth. *n.* 371. If he neglects to make repairs, and suffers the premises to become unsafe, it is clear that in ordinary cases, at least, no action will lie against the landlord for injuries suffered by the tenant, and caused by the unsafe condition of the premises arising from the neglect to repair. It is obvious, from this statement of fundamental principles, that in cases of an ordinary tenancy, the tenant cannot maintain an action against the landlord for injuries caused by the neglect to repair the demised premises, unless the landlord has expressly covenanted to repair.

If the appellant can maintain this action it must be because her case possesses some elements which carry it out of the general rule. The only element in this case which can with any plausibility be said to distinguish it from ordinary cases of tenancy, is that the landlord hired out apartments to separate tenants, and that their common stairway was the common passage for the use of all. It is difficult to perceive how this fact can exert a controlling influence upon the question of the landlord's liability, for, whether the premises are demised to one or to many tenants the principle upon which rests the landlord's immunity from the burden of repairing is not changed, nor does it change the effect of the contract by which the premises are demised. As said by a writer, already referred to: "For a tenant is at once a bailee and a purchaser; he is a bailee because of his ownership being determinable and not absolute; yet being exclusive while it lasts, he is, by the mere fact

of the demise, and in the absence of special undertakings to that effect, charged with a trust to restore the property in substantially the same condition as when he took it:" 6 Am. Law Rev. 614. It would seem clear, on principle, that the landlord's duty is the same whether he demises to one or to many tenants, so far as concerns his liability to a tenant for personal injuries caused by a failure to repair. In *Humphrey* v. *Wait*, 22 Upper Canada C. P. 580, the plaintiff had hired apartments of the defendant in a building occupied in part by other tenants, and sustained injuries by stepping through a hole in the floor of a common passage-way leading to the apartments, and it was held that an action could not be maintained against the landlord, and a nonsuit was directed. In the course of the opinion delivered in that case, HAGARTY, C. J., said: "It would be a singular state of the law if a landlord would not be answerable if he demised the stairway with the upper story, and would be answerable if he only gave a right to use the part of the house actually demised." In *Gott* v. *Gandy*, 2 E. & B. 845, Lord CAMPBELL, said: "Now let us see what are the facts alleged. They are these: the defendant was the landlord of the premises which were let to the plaintiffs from year to year; during the tenancy the premises were in a dangerous state for want of substantial repairs; the defendant had notice from the plaintiff, and was requested to repair them, and did not do so. There is no allegation of any contract to do substantial repairs. It lies therefore on the counsel of the plaintiffs, who are the actors, to establish on authority or on principle, that this obligation results from the relation of landlord and tenant. Mr. Russell can produce no authority in his favor, not even a dictum. And I have heard of no legal principle from which it would follow that the landlord was bound to repair the premises."

In *Cartairs* v. *Taylor*, L. R., 6 Ex. 216, the doctrine was carried to the extent of holding that there is no liability on the part of the landlord who himself occupied a part of the premises, unless it is shown that he was negligent with respect to the particular act which caused the injury. The English cases agree in holding that for injuries for a failure to repair, no action will lie by the tenant against the landlord: 1 Add. on Torts 240; Smith on Land. and Tenant 206; *Robbins* v. *Jones*, 15 C. B. N. S. 221; *Payne* v. *Rogers*, 2 H. Bl. 350.

Turning to the American authorities, we find in one of our

books this statement of the rule, whether too broad or not we need not stop to inquire: "The liability of the landlord exists only in favor of persons who stand strictly upon their rights as strangers:" Sherman and Redf. on Neg., sect. 503. Another author says: "An owner being out of possession, and not bound to repair, is not liable in this action (*i. e.*, for nuisance), for injuries received in consequence of his neglect to repair:" Whart. on Neg., sect. 817. In still another work, it is said, in speaking of a landlord's liability: "Nor in the absence of a covenant to repair is he liable for injury resulting from the faulty construction or condition of the premises, the control over which is in the hands of a tenant, either to a tenant or third persons:" Wood on Land. and Tenant, sect. 384; 1 Thomp. on Neg. 323. In 14 How. Pr. 163, the action was for injuries received from falling down a stairway forming a common passage-way, by one tenant occupying part of premises, also occupied by other tenants of the same landlord, and it was held that no action could be maintained. The same general principle is declared in the cases of *Doolittle* v. *Howard*, 3 Duer 464; *Robbins* v. *Mount*, 33 How. Pr. 24. In *Kaiser* v. *Hirsh*, 46 How. Pr. 161, it was held that an owner who occupied a part of the house was not liable for an injury to a visitor to one of his tenants, unless it was shown that his (the landlord's) negligence was the cause of the injury, and that the fact that he occupied a part of the premises created no presumption against him; a like doctrine is declared in *Moore* v. *Goedel*, 34 N. Y. 527. The Supreme Court of California, held in the case of *Loupe* v. *Wood*, 51 Cal. 586, that there was no liability on the part of the landlord arising from the defective condition of the walls of the cellar.

We have examined the cases cited by the appellant, and do not find any of them in point. The cases in the Georgia Reports are not in point, because they are founded upon an express statute making it the duty of the landlord to repair. The cases of *Godley* v. *Hagerty*, 2 Penn. St. 387, and *House* v. *Metcalf*, 27 Id. 600, were actions by a stranger, and are therefore not in point.

Fisher v. *Thirkell*, 21 Mich. 1; s. c. 4 Am. Rep. 422, is against rather than in favor of the appellant. In that case the landlord was held not to be liable to one who suffered an injury by falling through a scuttle in a sidewalk adjoining premises in the possession of a tenant. The other case cited, *Shindelbeck* v. *Moon*, 32 Ohio St. 264; s. c. 30 Am. Rep. 584, is also against the doc-

trine maintained by counsel. In that case the injury was occasioned by the accumulation of ice upon steps leading into a storeroom owned by the defendant, but occupied by a tenant; and the holding was that the landlord was not liable for injuries sustained by a stranger. In closing the opinion it was said: "And again it was the ice that occasioned the accident. It is not averred that it was the duty of the landlord to remove this ice, nor does it appear that he was called upon to do it. If this ice was a nuisance to the passing public, endangering their lives and limbs, it was a nuisance arising during the continuance of the lease. It was a thing temporary in its nature, a defective condition of things such as the tenant was called upon to remedy, and not the landlord, as between landlord and tenant."

We have, in our investigation, found one case which lends support to the general doctrine for which appellant's counsel contend. The case to which we refer is that of *Looney* v. *McLean*, 129 Mass. 33; s. c. 37 Am. Rep. 295. In that case the wife of the tenant of a part of a tenement-house occupied by several families, was injured by the giving way of one of the steps of the stairway leading to the roof of a shed used in common by the tenants for the purpose of drying clothes; and it was held that an action would lie against the landlord.

The question is not discussed, and only cases from Massachusetts are cited, and they do not decide the point. On the contrary, such of them as apply to the relation of landlord and tenant, recognise the rule that the landlord is not liable to the tenant for a failure to repair. Two of them do not touch upon the subject of a landlord's liability. One of the two is upon the question of the liability of a railroad company which constructs a passage-way across a public street, and the other is upon the same general question. But conceding the soundness of the ruling in that case it does not apply to the case at bar, for here the cause of the injury was not the defective construction of the stairway, or its unsafe condition at the time the premises were leased. The stairway here is directly connected with the part of the premises leased to the appellant; in the Massachusetts case it was otherwise. Here the thing which made the stairway unsafe was the temporary covering of snow and ice. While in the Massachusetts case the unsafe condition was permanent and had long existed. It is not necessary for us in the present case to lay down any general rule upon the subject of a

landlord's liability to a tenant occupying apartments in a tenement-house occupied by other tenants. It is sufficient for us to ascertain and state a rule governing cases such as that made by the evidence before us. We are satisfied the authorities warrant us in adjudging that where a stairway connected with the apartments hired in a tenement-house, occupied by several tenants, is rendered unsafe by temporary causes, such as the accumulation of snow and ice, the landlord is not liable to the tenant who uses such a stairway, with a full knowledge of its dangerous condition, unless there is a contract on the part of the landlord to keep the premises in repair and fit for safe use. Any other rule would entail upon landlords a grievous and unjust burden—cast upon them a duty which long-settled rules has imposed upon the tenants and which results in imperilling the interests of an owner out of possession and relieving those in possession of his property from that care which the law imposes upon bailees and others occupying analogous positions. If any other rule is adopted then the owner is charged with the duty of watching steps leading to every part of the premises, and of keeping them free from all temporary obstructions. For let it once be granted that the landlord is liable for obstructions or defects not permanent and not growing out of the character of the structure, it will be impossible to draw any line, and he must be held accountable for all obstructions and defects, no matter how transient their character. Whether a landlord hiring apartments to many tenants is liable for latent defects or for faults in the construction, or for permanent defects in the common passage-ways, we do not decide. The evidence before us shows that the ice and snow made the stairway unsafe and caused the accident. But for the ice and snow which the tenant could have removed with very little labor, or at a trifling expense, the appellant could have used the stairway in perfect safety. We are satisfied that the court below was right in holding that the cause of the accident was the accumulation of the ice and snow upon the stairway, and that for an injury resulting from such a cause, a landlord, who had made no covenant to repair, is not liable.

Judgment affirmed.

Referring to the duty of a landlord in the absence of a stipulation to repair, ERLE, J., says, that the relation of landlord and tenant gives rise to questions more frequently than any other relation; so we should expect to find an example

affirming the landlord's duty if it existed, but there is none: *Gott* v. *Gandy*, 23 L. J., Q. B. 1.

The common law of England casts the burden on the tenant, in ordinary cases, to repair: *Ferguson* v. ———, 2 Esp. 590; Taylor, Landlord & Tenant, sect. 327 (7th ed.).

American cases adopt this rule: *Jaffe* v. *Harteau*, 56 N. Y. 398; *Biddle* v. *Reed*, 33 Ind. 529; *Corey* v. *Mann*, 6 Duer 679; *Casad* v. *Hughes*, 27 Ind. 141; *Smith* v. *Kinkaid*, 1 Brad. 620; *Vai* v. *Weld*, 17 Mo. 232; *Krueger* v. *Farrant*, 13 N. W. Rep. 158.

The doctrine of *caveat emptor* applies to a tenant taking possession of the premises. He has opportunity for inspection, and he cannot claim immunity from or reimbursement for defects in the premises at the time of the demise: *Hart* v. *Windsor*, 12 M. & W. 68; *Gott* v. *Gandy*, *supra*, per Lord CAMPBELL; *Cleves* v. *Willoughby*, 7 Hill 83; *Dutton* v. *Gerrish*, 9 Cush. 89; *Welles* v. *Castles*, 3 Gray 323; *Keats* v. *Cadogan*, 10 C. B. 591.

But if there is a latent defect within the landlord's knowledge, and he rents the premises, he is liable for damages that may accrue to his tenants, as where the owner of a house knowing it to be infected with contagious diseases, leases it for the purposes of habitation without disclosing the fact to one who is ignorant of its condition: *Minor* v. *Sharon*, 112 Mass. 477; s. c. 17 Am. Rep. 122. To the same effect *Cesar* v. *Karutz*, 60 N. Y. 229; s. c. 19 Am. Rep. 164.

However, in case of a pasture let by the owner over which had accidentally been spread, without his knowledge, a poisonous substance which kills the cattle feeding in the pasture, the tenant is not released from his liability to pay the rent or abandon the pasturage: *Sutton* v. *Temple*, 12 M. & W. 52.

The doctrine laid down in the principal case that the stairway was appurtenant to the premises of the tenant, and being under her control and in her possession she was liable for repairs, does not accord with principles enunciated in some decisions in the Massachusetts Supreme Court:

In a case in that court MERRICK, J., says, "It is undoubtedly a well-settled principle of common law that the occupier and not the landlord is bound, as between himself and the public, so far to keep buildings, and other structures abutting upon common highways, in repair, that they may be safe for the use of travellers thereon, and that such occupier is *prima facie* liable to third persons for damages arising from any defect; but the defendants cannot avail themselves of that principle in defence of this action. Although all the separate parts of their building, consisting of cellars, stalls and disconnected chambers, were leased either at will or for a term of years to many different tenants, yet the defendants had a general supervision over the whole and had the entire control of the outside doors and outside passage-ways so far as was necessary to enable them to make repairs; the obligation to do which rested exclusively on them. They also kept the key of the market-room, and opened and closed the doors of it at certain fixed hours, conforming, however, in respect to the time of doing it, to the wishes of the tenants. Under these circumstances there was no such occupancy by the tenants as would cast upon them the obligation of keeping the building in repair, or to make them responsible to third persons for damages resulting from its defects; but the liability in that particular continued to rest on the owner:" *Kirby* v. *Boylston, &c., Association*, 14 Gray 250.

"There is no implied warranty in the letting of a house that it is safe and fit for habitation. A lease does not imply any particular state of the property let, or that it shall continue fit for the purposes for which it is let; unless other-

wise stipulated the tenant takes the premises as they are, and must pay the rent for the term. But this rule applies only to premises which, by the terms of the lease, have passed out of the control of the landlord into the exclusive possession of the tenant. Where a portion of a building is let, and the tenant has rights of passage-way over staircases and entries in common with the landlord and the other tenants, there is no such leasing as will exonerate the landlord from all responsibility for the safe condition of that portion of which he still retains control, and which he is bound to keep in repair; as to such portion, he still retains the responsibilities of a general owner to all persons, including the tenants of his building. The case shows that the plaintiff had a simple right of access to the shed over this staircase, as incident to her occupation of the premises leased to her. The duty of the defendant, having still the possession and control of the same was to protect her from injury in that right by the use of reasonable care on his part. The stairway was apparently intended to furnish a passage-way for her use, and the defendant is responsible for injuries received by one entering upon the same by his invitation or procurement, express or implied:" *Looney* v. *McLean*, 129 Mass. 33.

The defendants owned a building, consisting of three shops, standing forty feet back from the line of Essex street in Lawrence, and having a wooden platform extending from it to the sidewalk of Essex street. Oral leases of these shops were made to each tenant. The platform had no fences or lines of any kind separating the parts thereof in front of the several shops from each other, but was entirely open, so that persons passed over it in any direction in going to either of the shops. The plaintiff, without negligence, was injured by a defect in the platform. The court said, "If the lease to each tenant was of the shop occupied by him, and the landlord had constructed a platform for the common use and benefit of all the shops and of the public, there would be no presumption, in the absence of any agreement to that effect, that the tenants were to keep the platform in repair. Neither tenant acquired any exclusive right to use or control the part of the platform in front of his shop, and there was no such leasing of the platform as would exonerate the landlord from responsibility for defects in it."

The following instruction given in the court below was approved, to wit: "The presumption of law would be that such a platform, in the absence of any agreement, between the landlord and tenants of such shops as to repairs of it was to be repaired by the landlord. Such a platform would be like the single staircase provided by the landlord of a building consisting of several stories, divided into numerous tenements, occupied by different tenants, all of whom had right of ingress and egress into and from the building and their respective tenements by means of the common staircase, and all of whom might be presumed to be obliged to repair their respective tenements, and none of whom could be presumed to be obliged to repair the staircase, common to the use of every one of them and of their tenements:" *Readman* v. *Conway*, 126 Mass. 374.

In *Humphrey* v. *Wait*, 22 Upper Canada 587, HAGARTY, C. J., said: "If the plaintiff had become tenant to the defendant of the whole house, in the absence of express covenant or agreement, it is clear she would have no cause of action against him for non-repair. Her counsel, admitting this principle, seeks to put her claim on a better footing by saying, that with the part of the house demised, she had also granted to her a right of way over the passages for ingress and egress. She became tenant of the room while the hole was open in the passage. So long

as the landlord did nothing in the way of commission to derogate (as it were) from his own grant, she has, I think, no remedy. We may concede that he could not place any obstruction on the passage to hinder her use of it; but he was not, I consider, bound to repair and uphold it. It just amounts to this: A man owns a house in an almost ruinous state; another rents it from him as it stands; the latter has no remedy and must pay his rent. So if a man rent the upper story of a house with the staircase—the only means of approach—in a ruinous and unsafe state, I see no implied obligation on the landlord to uphold it or to answer in damages for an injury resulting from its insecure state."

In *Sullivan* v. *Waters*, 14 Ir. C. L. 460, it is said: "A mere license given by the owner to enter and use premises, for which the licensee has full opportunity, which contain no concealed cause of mischief, and in which any existing source of danger is apparent, throws no obligation upon the owner to guard the licensee against danger."

The owners of a pier are liable for injuries sustained by an individual, by reason of its defective construction and dangerous condition, notwithstanding the premises are at the time in the possession of a tenant, who has covenanted to keep the pier in repair, if the defects existed when the owners leased the property to him: *Moody* v. *Mayor, &c.*, 43 Barb. 282.

The occupant of apartments in a tenement is not bound either to see to the erection of a proper sink or privy upon the premises, or to cause them to be emptied to prevent an overflow. This duty devolves upon the landlord: *Fash* v. *Kavanagh*, 24 How. Pr. (N. Y.) 347.

The lessor is bound to make such repairs as are necessary to make the premises secure and safe for the purposes for which they are rented; and if their insecurity is known to him it is negligence not to do so. *Johnson* v. *Dixon*, 1 Daly 178.

A landlord was told that an outbuilding was in an unsafe condition, and he undertook, gratuitously, at the request of his tenant, to make it safe; he not only assumed to do the work, but he notified the tenant when it was done, invited him to use such building, assuring him it was perfectly safe. It proved unsafe, and the tenant's wife was injured thereby. The landlord was held liable. *Gill* v. *Middleton*, 105 Mass. 477.

A landlord's liability to the tenant depends on the exclusiveness of his possession and active control: Taylor, Landlord and Tenant, sect. 175; *Tenant* v. *Goldwin*, Lord Raymond 1089; *Priest* v. *Nichols*, 116 Mass. 401.

The servants of the occupants of an upper tenement accidentally left open a faucet, thereby causing the water to overflow and flood the tenement below. It was held that the occupants of the upper tenement were liable for damages thereby done: *Simonton* v. *Loring*, 68 Me. 164.

A stipulation "to repair" binds the lessee to rebuild in case of loss of fire during the term: *Nave* v. *Berry*, 22 Ala. 382.

For a covenant to repair is a covenant to rebuild: *Fowler* v. *Payne*, 49 Miss. 32.

Where premises are leased for a term of years, and the lessor does not covenant to rebuild the destruction by fire of the building rented will not exempt the lessee from the further payment of rent. He must pay for the whole of the term: *Gibson* v. *Perry*, 29 Mo. 245.

Prima facie a tenant is liable to answer for any neglect in the repair of fences or party walls, or for any improper use of the premises for the fixtures thereon, or for a nuisance kept on the premises, or for an obstruction of the highway adjacent: Taylor, sect. 178; *Chicago* v. *Brennan*, 65 Ill. 160; *Rider* v. *Smith*, 3 T. R. 766; *Regina* v. *Watts*, 1 Salk. 357.

CHARLES THOMPSON.